

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

(1)MALCOLM NIGEL SCOTT,)	
(2)DEMARCHOE CARPENTER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17-CV-400-TCK-FHM
)	
CITY OF TULSA, Oklahoma, et al.,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION TO COMPEL
COMPLIANCE BY THE TULSA COUNTY
COURT CLERK'S OFFICER UNDER FED. R. CIV. P. 45**

Plaintiffs' Malcolm Scott and Demarchoe Carpenter, by and through counsel, submits this First Motion to Compel Compliance of the Tulsa County Court Clerk's Officer Under Fed. R. Civ. P. 45. In support of this Motion, Plaintiffs' state as follows:

1. Plaintiffs issued a subpoena to Don Newberry, Tulsa County Court Clerk, on April 3, 2019. (See **Exhibit 1**, attached).
2. Plaintiffs sent notice of the subpoena to counsel for Defendants on the same day. (See **Exhibit 2**, attached).
3. The subpoena issued April 3, 2019 requested document production date of April 22, 2019 at 11:00 am. (See **Exhibit 1**, attached).
4. On April 22, 2019, the undersigned discovered from the hired process server that the subpoena issued on April 3, 2019 was never served on Don Newberry, Tulsa County Court Clerk. The lack of service was an oversight error.

5. On April 22, 2019, the undersigned issued a new subpoena to Don Newberry, Tulsa County Court Clerk, requesting the production of the same documents requested in Exhibit 1. (See **Exhibit 3**, attached).

6. The subpoena issued on April 22, 2019 requested a production date of May 9, 2019. (See **Exhibit 3**, attached).

7. The subpoena issued on April 22, 2019 was served on April 23, 2019.

8. On April 23, 2019, the undersigned received a call from Marc Dreyer with the Tulsa County Court Clerk's Office. Mr. Dreyer informed the undersigned that the Court Clerk's Office cannot comply with the subpoena without a signed order from a Judge. The undersigned explained to Mr. Dreyer the power of the federal subpoena and the compliance requirements under Fed. R. Civ. P. 45. Mr. Dreyer said he understood, and it is not common for the Court Clerk's Office to receive a federal subpoena, but his office policy is that he cannot comply without a signed court order.

9. During the phone conversation the undersigned asked Mr. Dreyer to put his comments in writing so that it could be presented to the Court. Mr. Dreyer did so in an email sent on April 23, 2019 to the undersigned. (See **Exhibit 4**, attached).

10. At no time has Mr. Dreyer objected to the subpoena on relevance grounds or based on any claim of privilege. Mr. Dreyer has stated he would comply with the subpoena if he had a signed court order to do so.

11. Through the course of discovery, it has come to Plaintiffs attention that Ken Price had a pending juvenile case at the time of Plaintiffs' trial. Mr. Price was a key eyewitness in the trial. Mr. Price has since retracted his trial testimony and testified that

his prior testimony was coerced by the Tulsa Police Department. Plaintiffs are seeking Mr. Price's juvenile file to help corroborate his claim of coercion. In particular, Mr. Price was arrested in his juvenile case immediately prior to his testimony at trial. Records regarding the reason behind that arrest would be found in the Tulsa County Court Clerk file.

12. There has been no objection or motion to quash filed to block the production requirements outlined in the subpoena issued on April 22, 2019.

13. Plaintiffs request an Order from the Court compelling compliance with the subpoena.

14. A copy of this Motion will be mailed to Don Newberry, Tulsa County Court Clerk, upon its filing.

CONCLUSION

Based on the facts and argument stated above, Plaintiffs respectfully requests that the Court issue an Order directing Don Newberry, Tulsa County Court Clerk, to comply with the subpoena issued on April 22, 2019.

Respectfully submitted,

/s/ W. BRETT BEHENNA
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2019, I filed the attached document with the Clerk of Court for the Western District of Oklahoma. A copy of this motion was provided via electronic filing to Defendants' counsel on the same day it was filed.

/s/ W. BRETT BEHENNA
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